

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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**FIREMAN'S FUND INSURANCE
COMPANY, a California Corporation,**

Case No. 2:10-cv-01816-MMD-VCF

Plaintiff,

Y.

ORDER

SLOAN VALVE COMPANY, a Delaware Corporation, and DOES 1-30 inclusive,

(Defendant's Motion for Re-
dkt. no. 90)

Defendants.

Before the Court is Defendant Sloan Valve Company's ("Defendant") Motion for Reconsideration (dtk. no. 90) of the Court's prior Order denying summary judgment (dkt. no. 89). For reasons discussed below, the Motion is denied.

A motion for reconsideration must set forth the following: (1) some valid reason why the court should revisit its prior order; and (2) facts or law of a “strongly convincing nature” in support of reversing the prior decision. *Frasure v. United States*, 256 F.Supp.2d 1180, 1183 (D. Nev. 2003). On the other hand, a motion for reconsideration is properly denied when the movant fails to establish any reason justifying relief. *Backlund v. Barnhart*, 778 F.2d 1386, 1388 (9th Cir. 1985) (holding that a district court properly denied a motion for reconsideration in which the plaintiff presented no arguments that were not already raised in his original motion). Motions for reconsideration are not “the proper vehicles for rehashing old arguments.” *Resolution*

1 *Trust Corp. v. Holmes*, 846 F. Supp. 1310, 1316 (S.D. Tex. 1994) (footnotes omitted),
 2 and are not “intended to give an unhappy litigant one additional chance to sway the
 3 judge.” *Durkin v. Taylor*, 444 F. Supp. 879, 889 (E.D. Va. 1977).

4 Defendant asserts that the Court’s Order denying Defendant’s Motion for
 5 Summary Judgment failed to address Defendant’s argument that any breach of implied
 6 warranty was time barred. Not only is this attempt to use a motion to reconsider as a
 7 vehicle to reassert a previously raised argument inappropriate, Defendant’s assertion is
 8 simply incorrect. The Court’s prior Order found that the purchase date of the defective
 9 product involves a question of material fact.¹ As the purchase date is unknown, the
 10 Court cannot determine when the statute of limitations began to run and subsequently,
 11 when and if it expired. Further, the Court cannot infer from the time between the
 12 manufacture date and the date of the suit that the claim is necessarily time barred.
 13 Although the idea that a product manufactured in 2000 may not be purchased until 2005
 14 or later apparently seems preposterous to Defendant, Defendant has presented no
 15 evidence that such a scenario is impossible or even implausible. Given that facts are
 16 viewed in the light most favorable to the non-moving party on a motion for summary
 17 judgment, the inference that the claim is time barred becomes even more unreasonable.

18 Defendant also asserts that summary judgment should have been granted
 19 because Plaintiff did not prove that the suit was brought within the statute of limitations.
 20 Defendant’s argument is fundamentally flawed. An assertion of the statute of limitations
 21 is an affirmative defense, and under Nevada law, the defendant bears the burden of
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 24 ¹Defendant spends a significant amount of its motion arguing that the Court erred
 25 by addressing only the installation date and not the delivery date of the product as the
 26 statute of limitations is calculated off of the delivery date. While Defendant is correct in
 27 this assertion and while the delivery necessarily precedes installation, the only evidence
 28 of the delivery date that Defendant provided was testimonial evidence of when the part
 may have been installed. Thus, the distinction that Defendant attempts to draw between
 delivery and installation is immaterial as the questions of material fact apply to both the
 installation and delivery dates. The Court’s prior Order discussed the installation
 because both parties used it as an approximation of the purchase/delivery date for
 purposes of the privity and statute of limitations analysis.

1 proof for affirmative defenses. NRCP 8(c); *Schwartz v. Schwartz*, 591 P.2d 1137, 1140
2 n. 2 (Nev. 1979). Here, Defendant has not carried its burden because questions of
3 material fact remain about when the statute of limitations began to run. Defendant's
4 argument that the claim is time barred is as unpersuasive in this motion as it was in the
5 last motion

6 IT IS THEREFORE ORDERED that Defendant's Motion for Reconsideration is
7 DENIED.

8 DATED THIS 3rd day of January 2013.

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11 MIRANDA M. DU
12 UNITED STATES DISTRICT JUDGE
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